

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES RASO, TRUSTEE
of the MASSACHUSETTS BRICKLAYERS
AND MASONS HEALTH AND WELFARE,
PENSION AND ANNUITY FUNDS,

Plaintiff,

v.

DEPAOLI MOSAIC CO., INC., FINAMORA
REALTY TRUST and WALTER F. MORGAN, JR.
Individually and as President of
DEPAOLI MOSAIC CO., INC.

Defendants.

05

11380 RGS

MAGISTRATE JUDGE Sorotin

C. A. No.

RECEIPT # 65309
AMOUNT \$ 250
SUMMONS ISSUED yes
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. JKW
DATE 6/30/05

COMPLAINT

Count 1

(as against DePaoli Mosaic Co., Inc.)

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq., as amended by the Multi-Employer Pension Plan Amendments Act. 29 U.S.C. §1381 et seq., brought on behalf of Massachusetts Bricklayers and Masons Health and Welfare, Pension and Annuity Funds ("Funds") for damages and injunctive relief arising from unpaid and delinquent contributions.

2. This court has jurisdiction pursuant to 29 U.S.C. §1132(e)(1) and venue lies in this district pursuant to 29 U.S.C. §1132(e)(2).

3. Plaintiff, Charles Raso, is the Trustee of the Funds and is a "fiduciary" within the meaning of Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3). The Funds are "multi-employer plans" within the meaning of Section 3(37)(A) of ERISA, 29 U.S.C. §1002(37)(A) and

"employee benefit plans" or "plans" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The Funds have a principal office at and are administered from 645 Morrissey Boulevard, Boston, MA.

4. Defendant DePaoli Mosaic Co., Inc. ("DePaoli") is an employer with a place of business at 126 Magazine Street, Boston, MA 02119. Defendant is an "employer" within the meaning of 29 U.S.C. §1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. §152(2), (6) and (7).

5. Defendant Walter F. Morgan, Jr. ("Morgan") is an individual residing at 9 Blackberry Lane, Andover, Massachusetts 01810 and the President of DePaoli Mosaic Co., Inc.

6. Finamora Realty Trust is a Massachusetts Trust located at 126 Magazine Street, Boston, Massachusetts.

7. The Bricklayers and Allied Craftsmen Union Local 3 Eastern Massachusetts ("Local Union 3") is a "labor organization" within the meaning of 29 U.S.C. §152(5).

8. At all material times, Defendant was obligated by the terms of one or more collective bargaining agreements between it and Local Union 3 and by the terms of Agreements and Declarations of Trust to which Defendant was bound to make contributions on behalf of certain employees to the Funds.

9. Defendant has failed to make required contributions to the Funds in violation of Section 515 of ERISA, 29 U.S.C. §1145 in the approximate sum of \$110,000 for the period of February 2005 through June 2005.

WHEREFORE, Plaintiff demands that judgment enter against Defendant in accordance with Section 502 of ERISA, 29 U.S.C. §1132(g)(2).

1. Awarding the Funds the following amounts:

- a. the unpaid contributions;
- b. interest on unpaid contributions at a rate of 1.5% per month from the date payment was due;
- c. liquidated damages pursuant to the collective bargaining agreements;
- d. all costs and reasonable attorney's fees incurred by the Funds in connection with this action;

2. Permanently enjoining the Defendant from violating its obligations under the terms of its collective bargaining agreements with Local Union 3 and the Agreements and Declarations of Trust to make timely contributions and reports to the Funds; and
3. Ordering such other and further relief as this court may deem just and proper.

Count 2
(as against Walter F. Morgan, Jr.)

10. Plaintiff hereby incorporates by reference Paragraph 1 through 9 as if set forth herein.
11. Upon information and belief, Defendant Morgan, is the President and principal shareholder of DePaoli who has control of DePaoli 's management and day to day operations. Upon information and belief, Defendant Morgan failed to respect the separate corporate identity of DePaoli and has acted with fraudulent intent with respect to the creditors of DePaoli .

12. Upon information and belief, Defendant Morgan is an alter ego of DePaoli .
13. Defendant Morgan, as an alter ego, is personally liable for the unpaid employee benefit contributions of DePaoli.

WHEREFORE, Plaintiff demands that judgment enter against Defendant Morgan in accordance with Section 502 of ERISA, 29 U.S.C. §1132(g)(2).

- (1) Awarding the Funds the following amounts:
 - a. the unpaid contributions;

- b. interest on unpaid contributions at a rate of 1.5% per month from the date payment was due;
- c. liquidated damages pursuant to the collective bargaining agreement;
- d. all costs and reasonable attorney's fees incurred by the Funds in connection with this action;

(2) Permanently enjoining Morgan from violating its obligations under the terms of its collective bargaining agreements with Bricklayers and Allied Craftsmen Local Union No. 3 and the Agreement and Declaration of Trust to make timely contributions and reports to the Funds; and

(3) Ordering such other and further relief as this court may deem just and proper.

Count 3
(as against Finamora Realty Trust)

14. Plaintiff hereby incorporates by reference Paragraph 1 through 13 as if set forth herein.

15. Upon information and belief, Defendant Morgan is the Trustee of Defendant Finamora Realty Trust ("Finamora").

16. Upon information and belief, Finamora is an asset of DePaoli.

17. Upon information and belief, DePaoli and Morgan have used the value inherent in the assets of Finamora as an asset of both DePaoli and Morgan to secure certain debt and other obligations of DePaoli.

18. Finamora is available and appropriate to satisfy the obligations of DePaoli and Morgan to the Plaintiff.

WHEREFORE, Plaintiff demands that judgment enter against Defendant Finamora in accordance with Section 502 of ERISA, 29 U.S.C. §1132(g)(2).

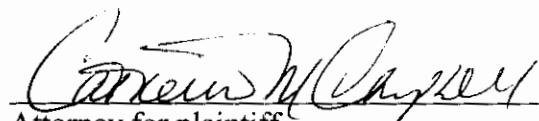
(1) Awarding the Funds the following amounts:

- a. the unpaid contributions;
- b. interest on unpaid contributions at a rate of 1.5% per month from the date payment was due;
- c. liquidated damages pursuant to the collective bargaining agreement;
- d. all costs and reasonable attorney's fees incurred by the Funds in connection with this action;

Dated: June 30, 2005

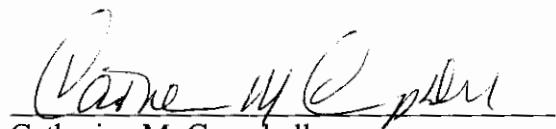
Respectfully submitted,

Catherine M. Campbell
BBO No. 5564
FEINBERG, CAMPBELL & ZACK, P.C.
177 Milk Street
Boston, MA 02109
(617) 338-1976


Attorney for plaintiff

Certificate Of Service

I, Catherine M. Campbell, hereby certify that I caused a copy of the foregoing to be mailed this date by certified mail, return receipt requested, to the United States Secretaries of Labor and Treasury.


Catherine M. Campbell

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Charles Raso, Trustee of the Massachusetts
Bricklayers and Mason Health and Welfare
Pension and Annuity Funds
(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

DePaoli Mosaic, Co., Inc., Finamora Realty
Trust and Walter F. Morgan, Jr., Individually
and as President of DePaoli Mosaic Co., Inc.
County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Recovery of Defrauded Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assaul, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (13957) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

Transferred from another district
(specify) 4 Reinstated or Reopened 5 (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)
Do not cite jurisdictional statutes unless diversity.)

Action by Pension Fund under ERISA 29 U.S.C. Sec. 1001 et seq. to collect

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

6/30/05

Catherine M. Campbell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)
Charles Raso, Trustee v. DePaoli Mosaic Co., Inc., et al.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

05 11380 RGS

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

XX II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

None

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES XXX NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES XXX NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES XXX NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES XXX NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION XXXXXXXXXXXX CENTRAL DIVISION XXXXXXXXXXXX WESTERN DIVISION XXXXXXXXXXXX

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Catherine M. Campbell

ADDRESS Feinberg, Campbell & Zack, PC, 177 Milk St., Ste. 300, Boston, MA 02109

TELEPHONE NO. (617) 338-1976